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In the Supreme Court of the United States

October Term, 1959

No. 201

LOREN J. PEEK, as Supervisor of Inspection, Arizona Fruit and Vegetable Standardization Service,

Appellant,

vs.

BRUCE CHURCH, INC., a California corporation,

Appellee.

On Appeal from the United States District Court for the District of Arizona.

SUPPLEMENTAL BRIEF OF APPELLEE

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1969

No. 301

LOREN J. PIKE, as Supervisor of Inspection, Arizona Fruit and Vegetable Standardization Service,
Appellant,

vs.

BRUCE CHURCH, INC.,
a California corporation,
Appellee.

On Appeal from the United States District Court for the District of Arizona

SUPPLEMENTAL BRIEF OF APPELLEE

This Supplemental Brief is filed by Appellee pursuant to Rule 41, Paragraph 5, of the Court's Rules.

Since the filing of Appellee's Brief, there has been received by Appellee the text of a "standardization law"

newly enacted at the last session of the New York Legislature. The law expresses in very clear and explicit terms the constitutional limitations given effect by the three-judge District Court below and which we are asking this Honorable Court to affirm.

In Appellant's enumeration of the standardization laws of "other states", no mention was made of the New York law.

The statute in question is Chapter 595 of the Laws of New York, entitled "An Act to amend the Agriculture and Markets Law, in relation to grade, brand and sale of lettuce", adopted on May 21, 1969. It adds to the Agriculture and Markets Law a new article, Article 13-C. The article authorizes the Commissioner of Agriculture of the State of New York to establish standards for grading and classifying lettuce which is *"packed or repacked within the state"*. It provides in part:

> "§ 160-q. Grades and branding. The commissioner is hereby authorized and empowered, after investigation and public hearing, to fix and promulgate official standards including good delivery standards at retail level for grading and classifying lettuce *packed or repacked within the state,* and to change any of them from time to time. In establishing such standards he shall, among other things, take into account so far as applicable the factors of maturity, condition, solidity, color, size, temperature control and freedom from defects and injury. The official standards so fixed and promulgated shall not be lower in their requirements than the minimum requirements of the official standards for corresponding grades of lettuce as promulgated from time to time

by the secretary of agriculture of the United States, which standards are commonly known as the "United States grades". (Italics ours.)

The statute provides further, in Section 160-t,

"§ 160-t APPLICATION OF ARTICLE

This act shall not apply to the sale of any lettuce which lettuce is ultimately sold outside of the state of New York."

Under the authority conferred upon him by the law, the Commissioner of Agriculture has adopted Rules and Regulations, designated as Part 188 (Lettuce Grades and Definitions of Culls) and Part 189 (Rules and Regulations Relating to Lettuce), which relate, among other matters, to "standard pack" in terms similar to the provisions of the Arizona law.

The principle that state regulation with reference to "pack" and "packing" is to be limited to packing done *in the state* is thus given clear recognition in the law of New York.

The Regulations, Part 188, specify that:

"Packing of product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Food, Drug and Cosmetic Act, other Federal Laws and Regulations, Article 17 of the Agriculture and Markets Law, and Rules promulgated pursuant thereto or with applicable provisions of the laws and regulations of other states."

The full text of the addition to the New York statute, Article 13-C, is set forth in the Supplement hereto.

CONCLUSION

For the reasons set forth in Appellee's Brief and in this Supplemental Brief, it is respectfully submitted that the judgment of the three-judge District Court below should be affirmed.

Dated, Salinas, California,
January 7, 1970.

Respectfully submitted,
JACOB ABRAMSON,
Attorney for Appellee.

EVANS, KITCHEL & JENCKES,
ABRAMSON & CHURCH,
Of Counsel.

(Supplement Follows)

Supplement

LAWS OF NEW YORK—BY AUTHORITY

CHAPTER 595

AN ACT to amend the agriculture and markets law, in relation to grade, brand and sale of lettuce

Became a law May 21, 1969, with the approval of the Governor. Passed by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The agriculture and markets law is hereby amended by adding thereto a new article, to be article thirteen-c, to read as follows:

ARTICLE 13-C
LETTUCE

Section 160-p. Definitions.

Section 160-q. Grades and branding.

Section 160-r. Sale of lettuce.

Section 160-s. Rules and regulations.

Section 160-t. Application of article.

§ 160-p. Definitions. As used in this article:

1. The words "closed package" mean a crate, box, carton or other container, the contents of which cannot be adequately inspected without opening.

2. The word "lettuce" means iceberg type lettuce.

§ 160-q. Grades and branding. The commissioner is hereby authorized and empowered, after investigation and

public hearing, to fix and promulgate official standards including good delivery standards at retail level for grading and classifying lettuce packed or repacked within the state, and to change any of them from time to time. In establishing such standards he shall, among other things, take into account so far as applicable the factors of maturity, condition, solidity, color, size, temperature control and freedom from defects and injury. The official standards so fixed and promulgated shall not be lower in their requirements than the minimum requirements of the official standards for corresponding grades of lettuce as promulgated from time to time by the secretary of agriculture of the United States, which standards are commonly known as the "United States grades".

Each closed package of lettuce, when sold, exposed for sale or transported for sale, shall be plainly and conspicuously branded to show:

1. Grade.
2. Number of heads.
3. That the package was vacuum cooled if such be the fact.
4. Name and address of packer or repacker.

In case the branding upon any closed package of lettuce is changed, the person making the change shall cancel the name and address of the original packer and substitute therefor his own name and address.

§ 160-r. Sale of lettuce. 1. No person shall sell, expose for sale or transport for sale within this state,

regardless of place of origin, lettuce in closed packages which are not branded as required by section 160-q, except that lettuce packaged by a retailer and sold or offered for sale by such retailer, need be branded only as to grade.

2. No person shall sell or expose for sale at retail single unwrapped heads of lettuce except from a bulk display which shall be plainly and conspicuously marked as to grade.

3. No person shall sell, offer for sale, or transport for sale lettuce in open or closed packages, or unwrapped lettuce, if the branding, representation as to grade, or any statement, design or device appearing on the label, package or bulk display shall be false or misleading in any particular.

4. When lettuce in closed packages is delivered to a common carrier for shipment, such delivery shall be presumptive evidence that the lettuce is intended for sale.

5. No lettuce shall be sold in cardboard containers unless it is vacuum cooled.

§ 160-s. Rules and regulations. The commissioner is hereby authorized, after public hearing, to adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary.

§ 160-t. Application of article. This act shall not apply to the sale of any lettuce which lettuce is ultimately sold outside of the state of New York.

§ 2. This act shall take effect immediately.